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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,126	01/28/2004	Bob Herman	HERMAN04-01	4296

7590 11/26/2004
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EXAMINER

COBURN, CORBETT B

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,126

Applicant(s)

HERMAN, BOB

Examiner

Corbett B. Coburn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Sports Betting Pool With Tie-Breaker.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 & 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motorsport F1 Pick 6 (<http://www.motorsport.com/compete/p6/rules.asp>) in view of Tsatskin (US Patent Number 4,842,275).

Claim 1: F1 Pick 6 describes a contest with a plurality of participants. The outcome of the contest is determined by a competitive event in which a finite set of competitors compete. Each competitor's performance generates at least one statistic during the competition event – including those who do not win the competition. Each participant selects a subset of predetermined size (6) from the list of competitors. At a predetermined point during the sporting event, an index is computed for each participant by summing the statistics associated with each competitor in each participant's subset,

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without regard to the relationship of the competitors in the participant's subset.

Participants are ranked according to the calculated index.

F1 Pick 6 does not, however, have a tie-breaker feature. Tsatskin, another invention relating to sports contests, uses the statistics generated by the competitor's performance to rank the participants in the case of a tie. (Col 5, 4-21) Tie-breakers are well known in the art. Tie-breakers often allow a single winner to be declared instead of joint winners. This lends excitement to the game. It would have been obvious to one of ordinary skill in the art at the time of the invention to have ranked tied participants based on the statistics of the differentiating selections in order to be able to announce a single winner, thus increasing the excitement of the game.

Claim 2: F1 Pick 6 discloses that the participant ranks the competitors in the participant's subset and that participant's score is based on these rankings. F1 Pick 6 does not teach tie-breaking. Tsatskin teaches serially comparing statistics in order to break ties. (Col 5, 4-21) Tie-breakers are well known in the art. Tie-breakers often allow a single winner to be declared instead of joint winners. This lends excitement to the game. It would have been obvious to one of ordinary skill in the art at the time of the invention to have ranked tied participants by serially comparing rankings and, if a selection differentiates the tied participants, ranking the tied participants according to the statistics of the differentiating selections in order to be able to announce a single winner, thus increasing the excitement of the game.

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4. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motorsport F1 Pick 6 and Tsatskin as applied to claim 1 or 5 above, and further in view of Scarne (Scarne's New Complete Guide to Gambling, 1961, pages 160-162).

Claims 3 & 5: Motorsport F1 Pick 6 and Tsatskin teach the invention substantially as claimed. They do not, however, teach wagering. Scarne teaches that wagering on sporting events is well known. Many people believe that wagering on an event makes that event more exciting. Scarne also teaches giving an award to a predetermined number of participants. (Page 160) This ensures that the prize can be large enough to entice participants to play. It would have been obvious to one of ordinary skill in the art at the time of the invention to have each participant place a wager and reward a predetermined number of participants by order in order to increase the excitement of the game and to ensure that the prize can be large enough to entice participants to play.

Claims 4 & 6: Scarne teaches a baseball pool in which wagers were pooled and the reward was a predetermined portion of the pool.

Conclusion

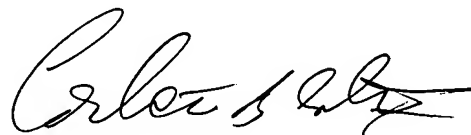
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pearson et al. (US Patent Number 5,971,854) teaches aggregating statistics to determine a winner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Corbett B. Coburn

Examiner

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